

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

IRA LATHAN Jr.,
Plaintiff,
v.
W. MARKHAM *et al.*,
Defendants.

Case No. C05-5549RBL

REPORT AND
RECOMMENDATION:

**NOTED FOR:
January 7th, 2006**

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion to dismiss. (Dkt. # 11). The motion was filed three days before an answer was received. Plaintiff indicates he wishes to dismiss this action and be relieved of the filing fee. (Dkt # 11).

DISCUSSION

Fed.R.Civ.P. 41(a)(1) gives a plaintiff the right to dismiss an action prior to an answer being filed. The plaintiff may simply file a notice of dismissal. The court considers plaintiff's motion to be such a notice. Plaintiff will still have to pay the filing fee in this action, but the action should be dismissed without prejudice based on plaintiff's motion.

CONCLUSION

The court should consider plaintiff's motion as a notice of dismissal and this action should be **DISMISSED WITHOUT PREJUDICE**. Plaintiff must still pay the filing fee in this case. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **January 7th, 2006**.

DATED this 8th day of December, 2005.


Karen L. Strombom
United States Magistrate Judge